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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/688,451 | 10/18/2003 | Chih-Yu Hsia | | 1573 |

7590 11/24/2004
Chih-Yu Hsia
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Arcadia, CA 91007

EXAMINER

PARSLEY, DAVID J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3643

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,451

Applicant(s)

HSIA, CHIH-YU

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology in particular the term "means" on lines 9, 10, 11 and 12 and it is over 150 words in length.

Correction is required. See MPEP § 608.01(b).

2. The disclosure is objected to because of the following informalities: on page 2 line 14

"ARTS" should be - -ART- -.

On page 3 line 20, "uses" should be - -use- -.

On page 6 line 23 "it" should be - -its- -.

Appropriate correction is required.

Claim Objections

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3. Claim 14 is objected to because of the following informalities: the term "mean" should be - -means- - in lines 2, 4 and 5. Appropriate correction is required.

Claim 14 is objected to because of the following informalities: in line 3, line 6 and line 10 insert the term - -said- - between "of" and "snail". Appropriate correction is required.

Claim 22 is objected to because of the following informalities: the term "mean" should be - -means- - in lines 1 and 2. Appropriate correction is required.

Claim 22 is objected to because of the following informalities: the term "mean" should be - -means- - in line 2. Appropriate correction is required.

Claim 23 is objected to because of the following informalities: the term "mean" should be - -means- - in line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 14-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the two end openings of said base" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. It is unclear to whether the "component of snail and slug fence" in line 3 or the "other said component of snail and slug fence" in lines 5-6 refers to the component of the snail and slug fence in the preamble, line 1.

Claim 14 recites the limitation "said component of snail and slug fence" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "other said component of snail and slug fence" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

Claims 15-28 depend from rejected claim 14 and include all of the limitations of claim 14 thereby rendering these dependent claims indefinite.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There are two different male connection means and female connection means disclosed in parent claim 14 and it is unclear to which of these male and female connection means are being referred to in claim 22.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "savoring" in line 2 renders the claim indefinite in that it is unclear to what the applicant defines as the meaning of this term with respect to the claim. As seen in Webster's Collegiate Dictionary 10th edition, the term savoring means enjoying. Giving the term savoring its literal meaning in the claim would make the claim indefinite. Applicant can be his own lexicographer, however applicant does not offer a meaning for the term "savoring" in the disclosure and therefore the claim is indefinite.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by DE Patent No. 3336133.

Referring to claim 1, the German patent discloses a snail and slug fence comprising in combination, a base – the vertical piece inserted into the ground in figures 1 and 3, which encircles a ground area when the snail and slug fence is in use – see for example figures 1-3 and the English abstract, a rim plate – at 1,2, which has a surface with substantially needle-like protruding objects – see figures 1 and 3, one end of the base plate connecting with the rim plate – see figures 1 and 3, the substantially needle-like protruding objects pointing downwards approximately vertically when the snail and slug fence is in use – see for example figures 1-3.

Referring to claim 2, the German patent discloses the substantially needle-like protruding objects occupy a portion of the surface of the rim plate – see for example figures 1 and 3.

Referring to claims 3-4, the German patent discloses the substantially needle-like protruding objects have different lengths – see for example figures 1-3.

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Referring to claim 5, the German patent discloses the rim plate has a handle – at 3 or at the vertical piece extending into the ground, protruding from a surface, which does not have the substantially needle-like protruding objects – see for example figures 1 and 3.

Referring to claim 6, the German patent discloses the rim plate – at 1,2, has a handle – at 3 or at the vertical portion, in plural form protruding from a surface which does not have the substantially needle-like protruding objects – see for example figures 1 and 3.

Referring to claim 7, the German patent discloses the base plate has a plate – at 1,2,3 or at glas in figure 3, protruding from a surface – see for example figures 1 and 3.

Referring to claim 8, the German patent discloses a plate in plural form protruding from a surface – see for example figures 1 and 3.

Referring to claim 10, the German patent discloses the end of the base that does not have the rim plate has a sharp edge – see the portion of the vertical section located in the ground in figures 1 and 3.

Referring to claim 29, the German patent discloses a component of a snail and slug fence comprising a strip – at 2,3, that has a surface partially filled with substantially needle-like protruding objects along the strip – see for example figures 1-3.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the German patent as applied to claims 1 or 29 above, and further in view of U.S. Patent No. 4,165,577 to Shanahan et al.

The German patent does not disclose the two openings of the base have different cross sectional areas. Shanahan et al. does disclose the two openings – at 64 and proximate 65-66, have different cross sectional areas – see for example figure 10. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the German patent and add the base with two openings of different cross sectional area of Shanahan et al., so as to allow for the device to keep pests away from a structure.

Claims 11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the German patent or the German patent as modified by Shanahan et al. as applied to claims 1 or 14 above, and further in view of U.S. Patent No. 5,170,584 to Perry. The German patent and the German patent as modified by Shanahan et al. do not disclose the end of the base that does not have the rim plate consists of sharp-edged spaced apart objects. Perry does disclose the end of the base – at 4, that does not have the rim plate consists of sharp-edged spaced apart objects – at 120. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the German patent or the German patent as modified by Shanahan et al. and add the sharp-edged spaced apart objects of Perry, so as to allow for the device to be securely held in the ground.

Claims 12-13 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the German patent or the German patent as modified by Shanahan et al. as applied to claims 1 or 14 above, and further in view of U.S. Patent No. 4,319,423 to Judd.

Referring to claims 12-13 and 27-28, the German patent and the German patent as modified by Shanahan et al. do not disclose the base has a screen or multiple screens. Judd does disclose the base has a screen or multiple screens – at 10a,16,18 – see figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the German patent or the German patent as modified by Shanahan et al. and add the base with screens of Judd, so as to allow air to enter through the device but not the pests.

Claims 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the German patent in view of Shanahan et al.

Referring to claim 14, Shanahan et al. discloses a component of a snail and slug fence comprising, a base – the vertical portion in the ground in figures 1 and 3, a rim plate – at 1,2,3, which has a surface with substantially needle-like protruding objects – see figures 1 and 3, one edge of the base connecting with the rim plate – see figures 1 and 3, the substantially needle-like protruding objects pointing downwards approximately vertically when the component of snail and slug fence is in use – see figures 1 and 3. The German patent does not disclose the base has a male connection means engaging a female connection means of another component of the snail and slug fence and the base has a female connection means engaging with a male connection means of another component of the snail and slug fence. Shanahan et al. does disclose the base – as seen in figures 2, 5 or 10, has a male connection means – at 11 or 61, engaging a female connection means – see figure 2 or – at 60, of another component of the snail and slug fence and the base has a female connection means – at 14 or 14b, engaging with a male connection means – at 28 or 28a of another component of the snail and slug fence – see for example figures 2, 5 and 10. Therefore it would have been obvious to one of ordinary skill in the art to take the device

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of the German patent and add the base with male and female connection means of Shanahan et al., so as to allow for the device to be removably attached for easy assembly/disassembly to facilitate storage and transport of the device.

Referring to claim 15, the German patent as modified by Shanahan et al. further discloses the substantially needle-like protruding objects occupy a portion of the surface of the rim plate – see for example figures 1 and 3 of the German patent.

Referring to claims 16-17, the German patent as modified by Shanahan et al. further discloses the substantially needle-like protruding objects have different lengths – see for example figures 1-3 of the German patent.

Referring to claim 18, the German patent as modified by Shanahan et al. further discloses the rim plate has a handle – at 3 or at the vertical piece extending into the ground, protruding from a surface, which does not have the substantially needle-like protruding objects – see for example figures 1 and 3 of the German patent.

Referring to claim 19, the German patent as modified by Shanahan et al. further discloses the rim plate – at 1,2, has a handle – at 3 or at the vertical portion, in plural form protruding from a surface which does not have the substantially needle-like protruding objects – see for example figures 1 and 3 of the German patent.

Referring to claim 20, the German patent as modified by Shanahan et al. further discloses the base plate has a plate – at 1,2,3 or at glas in figure 3, protruding from a surface – see for example figures 1 and 3 of the German patent.

Referring to claim 21, the German patent as modified by Shanahan et al. further discloses a plate in plural form protruding from a surface – see for example figures 1 and 3 of the German patent.

Referring to claim 22, the German patent as modified by Shanahan et al. further discloses the male connection means – at 28 or 28a, consists of a plate protruding from the one edge, and the female connection means – at 14 or 14b, consists of two substantially parallel plates protruding from the opposite edge – see for example figures 2 and 10 of Shanahan et al.

Referring to claim 23, the German patent as modified by Shanahan et al. further discloses the plate of the male connection means has a groove along which allows bending of the plate – see for example at the upper portion of item 28 or 28a in figures 2 and 10 of Shanahan et al.

Referring to claim 24, the German patent as modified by Shanahan et al. further discloses the plate of the male connection means has two grooves along which allow bending of the plate – see for example at the upper portion of item 28 or 28a in figures 2 and 10 of Shanahan et al.

Referring to claim 25, the German patent as modified by Shanahan et al. further discloses the end of the base that does not have the rim plate has a sharp edge – see the portion of the vertical section located in the ground in figures 1 and 3 of the German patent.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The following patents are cited to further show the state of the art with respect to snail traps and barriers in general:

U.S. Pat. No. 392,347 to Krause – shows pest fence

U.S. Pat. No. 395,678 to Wiebrock – shows pest fence

U.S. Pat. No. 413,507 to Halstead – shows pest fence

U.S. Pat. No. 1,373,827 to Nelson et al. – shows pest fence

U.S. Pat. No. 2,149,495 to Barnard et al. – shows fence with protrusions

U.S. Pat. No. 3,550,308 to Ibach – shows slug trap

U.S. Pat. No. 3,772,820 to Bond – shows slug trap

U.S. Pat. No. 4,566,219 to Firth – shows slug fence

U.S. Pat. No. 4,821,452 to Beckley – shows slug trap

U.S. Pat. No. 5,175,958 to Wedemeyer – shows slug trap

U.S. Pat. No. 5,390,441 to Pence – shows slug fence

GB Pat. No. 2218314 – shows pest fence

DE Pat. No. 3524923 – shows pest fence

FR Pat. No. 2560006 – shows slug trap

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OP

David Parsley
Patent Examiner
Art Unit 3643

Kurt Rowan

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